

REMARKS

Claims 2-12 and 14-24 are now pending in the present application. Claims 1 and 13 were previously cancelled without prejudice. Consideration of the pending claims is respectfully requested.

STATEMENT OF COMMON OWNERSHIP

All extant claims have been rejected in accordance with U.S.C. §103(a), as being unpatentable over Keller (U.S. Patent No. 4,869,911), in view of Weinstein et al. (U.S. Patent No. 5,639,485) and Parsons et al. (U.S. Patent No. 6,509,049). It has previously been recognized that applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. MPEP 706.02(l)(2). The subject application (Serial No. 10/622,400) and the Parsons et al. '049 patent were, at the time the invention of the subject application was made, owned by a common entity, namely, Pepsico, Inc.

The Parsons et al. '049 patent was filed on June 16, 2000, and issued on January 21, 2003. It was assigned to the Quaker Oats Company of Chicago, Illinois. This assignment is recorded at reel/frame: 011063/0257. On August 2, 2001, the Quaker Oats Company merged with Pepsico, Inc. and became a wholly-owned subsidiary of Pepsico, Inc.

The subject application (Serial No. 10/622,400) was filed on July 18, 2003, as a continuation-in-part of application No. 10/047,503, filed on October 29, 2001 (now U.S. Patent No. 6,620,448). The subject application (Serial No. 10/622,400) was originally assigned to Recot, Inc. of Pleasanton, California. This assignment is recorded at reel/frame: 014501/0542. It was subsequently assigned to Frito-Lay North America, Inc. of Plano, Texas. This assignment is recorded at reel/frame 015544/0048 and 014297/0531. At all times relevant to the assignments of the subject application, Recot, Inc. and Frito-Lay North America, Inc. were wholly-owned subsidiaries of Pepsico, Inc.

Thus, at the time of filing the subject application (Serial No. 10/622,400), it and the Parsons et al. '049 patent were, owned by the common entity of Pepsico, Inc. Therefore, the Parsons et al. '049 patent should be disqualified from being used in a rejection under 35 U.S.C. §103(a) against the claims of the subject application (Serial No. 10/622,400).

Applicants respectfully request that the rejection of Claims 2-12 and 14-24 be withdrawn.

CONCLUSION

Applicants believe the application is now in condition for allowance. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Jeffrey G. Degenfelder at 972.367.2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

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